U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 33446317

Date: AUG. 28, 2024

Motion on Administrative Appeals Office Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a religious faith writer and advocate for the disabled, seeks classification as an alien of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that he met the initial evidentiary requirements for this classification through evidence of either a major, internationally-recognized award or meeting at least three of the ten evidentiary criteria under 8 C.F.R. § 204.5(h)(3). After we dismissed the Petitioner's initial appeal, the Director dismissed four motions. In our most recent decision, we summarily dismissed a subsequent appeal. The matter is now before us on combined motions to reopen and reconsider.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). Upon review, we will dismiss the motion.

A motion to reopen must state new facts and be supported by documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must establish that our prior decision was based on an incorrect application of law or policy and that the decision was incorrect based on the evidence in the record of proceedings at the time of the decision. 8 C.F.R. § 103.5(a)(3). Because the scope of a motion is limited to the prior decision, we will only review the latest decision in these proceedings. 8 C.F.R. § 103.5(a)(1)(i), (ii). We may grant motions that satisfy these requirements and demonstrate eligibility for the requested benefit. *See Matter of Coelho*, 20 I&N Dec. 464, 473 (BIA 1992) (requiring that new evidence have the potential to change the outcome).

On motion, the Petitioner submits emails between himself and his former attorneys in which they explain their decision to not pursue an appeal. He expresses his regrets at his attorneys' failure to submit an appeal brief, and asks that we nevertheless consider his assertions regarding the merits of his petition. However, the Petitioner does not assert that our summary dismissal was erroneous, or provide evidence which would support such an assertion. He also does not seek to establish that our

summary dismissal was based upon an incorrect application of law or policy and was incorrect based on the evidence of record at the time of the decision. Therefore, the motions will be dismissed. 8 C.F.R. § 103.5(a)(4).

Although we dismiss the motions as explained above, we will briefly discuss the Petitioner's brief regarding the merits of his petition. In our decision of April 23, 2020, we agreed with the Director's conclusion that the Petitioner met the criterion at 8 C.F.R. § 204.5(h)(3)(ii), relating to his authorship of scholarly articles in his field. We also discussed at length the evidence the Petitioner submitted in support of the two remaining evidentiary criteria he claimed to meet, which relate to lesser nationally or internationally recognized awards and published materials about him and his work in the field, and concluded that he met neither criterion.[1]

In support of his claim under 8 C.F.R. § 204.5(h)(3)(i), the Petitioner has provided further evidence with his motions regarding the nomination process for his [redacted] award. But this evidence reinforces that the award is given for contributions to the Catholic Church, and not for excellence in the Petitioner's field of endeavor. As we indicated in our initial decision on appeal, the profiles of other winners shows that they received their awards for a variety of activities related to the Catholic Church, and in many cases for unexplained service to the church. This evidence has not established that the Petitioner meets all of the elements of this criterion.

Regarding the Petitioner's claim under 8 C.F.R. § 204.5(h)(3)(iii), which requires evidence of published materials about him and his work, the Petitioner has provided evidence concerning the publication date, author, and title of the previously submitted articles. In addition to the previously acknowledged article in *American Ideals*, this evidence confirms that two of these materials were published in the *East African Standard* on [redacted] and 28, 1999, and one in the *Kenya Times* on [redacted] 1996.

However, the additional evidence does not establish that any of these media are professional or major trade publications, or other major media, as required under this criterion. A letter from the publisher (Standard Group) of the *East African Standard* (now *The Standard*) states that it is a leading multimedia publishing house in Kenya and that the newspaper has been in existence since 1902, and other evidence suggests that the Standard Group is one of four "main players" in multimedia in Kenya. But USCIS need not rely on the self-promotional material of the publisher. *See Braga v. Poulos,* No. CV 06 5105 SJO (C. D. CA July 6, 2007) *aff'd* 2009 WL 604888 (9th Cir. 2009) (concluding that self-serving assertions on the cover of a magazine as to the magazine's status is not reliable evidence of major media). Whether a certain medium qualifies under this criterion depends upon factors such as the intended audience and its relative circulation, readership, or viewership. *See generally* 6 *USCIS Policy Manual* F.2(B)(1). The broad statements concerning the Standard Group's status is insufficient to establish that the *East African Standard* is or was a major medium.

As for the other two publications, the evidence does not show that they are qualifying media. Notably, the record indicates only that the *Kenya Times* went out of publication several years before the filing

[1] As the Petitioner did not challenge the Director's decision regarding two additional evidentiary criteria at 8 C.F.R. §§ 204.5(h)(3)(v) and (viii), we concluded that the Petitioner's claim to those criteria had been waived.

of the instant petition. And the availability of *American Ideals* on the internet is insufficient, as the sole factor, to demonstrate that it qualifies as a major medium.

Finally, we note that much of the evidence submitted with the Petitioner's current motion concerns recent events which have occurred well after the filing of his petition. But eligibility must be established at the time of filing. 8 C.F.R. §§ 103.2(b)(1), (12); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971). A petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *Matter of Izummi,* 22 I&N Dec. 169, 175 (Comm'r 1998). That decision, citing *Matter of Bardouille,* 18 I&N Dec. 114 (BIA 1981), further provides that USCIS cannot "consider facts that come into being only subsequent to the filing of a petition." *Id.* at 176. Thus, while we dismiss the Petitioner's combined motions because they do not establish that our summary dismissal of his appeal was in error, we note that even if we were to consider his assertions and evidence regarding the merits of his petition, they would not establish his eligibility as an individual of extraordinary ability.

ORDER: The motion to reopen is dismissed.

FURTHER ORDER: The motion to reconsider is dismissed.